

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 25 OF 2015**

**DISTRICT : KOLHAPUR**

Shri Gajanan Pundlik Patil, )  
Working as Laboratory Assistant, )  
Rajaram Mahavidyalaya, Sagarmal, )  
Vidyanagar, Kolhapur. )  
R/o: Rajhans, Plot no. 19/20, )  
Shivnerinagar, Panchgaon, )  
Kolhapur 416 013. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Principal Secretary, )  
Higher & Technical Education )  
Department, Mantralaya, )  
Mumbai 400 032. )
2. The Director of Education, )  
Directorate of Higher Education, )  
Maharashtra State, Central Bldg., )  
Pune 411 001. )

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3. The Joint Director of Higher Education, Kolhapur Division, Rajaram College Compound, Vidyanagar, Kolhapur 416 004. )...**Respondents**

Ms Swati Manchekar, learned advocate for the Applicants.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 08.07.2016**

**ORDER**

1. Heard Ms Swati Manchekar, learned advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking regularization of services as Laboratory Assistant at Rajaram College, Kolhapur with effect from 8.3.1999 in terms of G.R dated 8.3.1999.

3. Learned Counsel for the Applicant argued that the Applicant was initially appointed as 'Laboratory Assistant' for a period of 29 days on ad hoc basis from

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7.7.1994 to 4.8.1994. He was thereafter continued in service by similar orders of 29 days by giving breaks in between two spells of appointments. Last order was issued on 16.3.1995 and was valid up to 13.4.1995. As the Applicant's service was not continued, he approached Labour Court at Kolhapur under Section 28 of the Maharashtra Recognition of Unfair Labour Practices Act, 1971 by filing ULP no. 140/1995 on 27.6.1995. Labour Court, Kolhapur, granted him ex-parte interim relief on 27.6.1995 which was confirmed on 20.6.1996. The Applicant continued to work as Laboratory Assistant from 4.7.1995 onwards as per interim relief granted by the Labour Court.

4. Government issued a G.R dated 8.3.1999 to regularize services of 3761 employees, who were given ad hoc appointments without reference to Selection Boards, subject to certain conditions. Those who have working for one year on 1.4.1999 and who fulfilled basic criteria of eligibility for regular appointment were to be regularized. The list of candidates included 29 posts from Higher Education Department, 2 posts were from a college in Nagpur, 22 posts were from various Government colleges in Mumbai and 5 posts were from Rajaram College, Kolhapur. Services of 18 employees from Mumbai were regularized by Government decision dated 29.6.1999. The name of the Applicant (or the post he was occupying) was included in 1378 posts from Education & Higher



Education Department which were to be regularized in terms of G.R dated 8.3.1999. The Applicant's post was one of the 3 posts of Laboratory Assistants to be regularized from Rajaram College, Kolhapur. Two of the 5 posts (one Laboratory Assistant and one Driver) were subsequently filled in by Regional Subordinate Services Selection Board leaving three ad hoc employees including the Applicant, who continued to work due to orders of the Labour Court. The Respondent no. 1 called the information from the Principal, Rajaram College, Kolhapur about the persons whose services were to be regularized, and the same was furnished by Fax on 7.4.1999 by the Principal. This has name of the Applicant. However, the services of the Applicant were not regularized. The Applicant submitted a representation dated 10.5.2000 to the Minister of the Department. The Applicant did not receive any reply and therefore, he sought permission of the Labour Court to amend his ULP to seek regularization of his services. His ULP was ultimately dismissed by order dated 15.3.2012 by the Labour Court, Kolhapur. The Applicant approached the Industrial Court by filing Revision Application (ULP) no. 44/2012 and also sought interim relief. He had continued in service due to interim relief granted to the Applicant by Industrial Court by order dated 2.4.2012. The Applicant had since withdrawn his Revision Application from the Industrial Court on 7.6.2016.



5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has approached this Tribunal by filing present Original Application when his case seeking similar relief of regularization was pending before the Industrial Court, Kolhapur. Only after this Original Application was taken up for final hearing he has withdrawn his Revision Application from the Industrial Court, Kolhapur. As the Applicant has been seeking relief from Labour/Industrial Court, this Tribunal may not entertain his Original Application. The Applicant's services as Laboratory Assistant were continued by virtue of the interim order of the Labour Court, Kolhapur, dated 4.7.1995 and the Applicant was continued in Rajaram College, Kolhapur by order dated 4.7.1995. The ULP of the Applicant was dismissed by the Labour Court, Kolhapur on merits by order dated 15.3.2012 and he was held not entitled to any relief. This clearly shows that the Applicant is not eligible to get his services regularized. Learned Presenting Officer argued that the Applicant is seeking regularization of his services by virtue of G.R dated 8.3.1999, after more than 15 years. The Original Application is clearly barred by time and the Applicant has not sought any condonation of delay in filing this Original Application. On this ground alone this Original Application deserves to be dismissed. Learned Presenting Officer argued that the Applicant is relying on the judgments of this Tribunal dated 12.4.2006 in a group of

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O.A nos 327 of 2001 etc. The facts in those Original Applications were totally different and have no bearing in the present case. Judgment in O.A no 6/2011 dated 15.4.2011 is based on the aforesaid judgment and not applicable in the present case. In O.A no 930/2010, decided by this Tribunal on 27.6.2013, the Applicant's case was not dismissed by Labour Court, but he was ordered to be continued in the post till a regularly selected candidate was appointed. The Applicant was found eligible to be regularized on the basis of G.R dated 3.12.2008. The facts are entirely different here. In O.A no 416/2012, decided by this Tribunal on 15.12.2014, the Applicant was not continued in service by the order of Labour Court/Industrial Tribunal. His case was decided on the basis of doctrine of similarly situated person in the light of judgment in O.A nos 327 of 2001 etc. The Applicant's case is clearly different. He was held not eligible for regularization of services by Labour Court. This Tribunal may not grant any relief, contrary to the decision of the Labour Court. fh

6. It is seen that the Applicant has filed this Original Application on 15.1.2015 and he is seeking regularization of service from 8.3.1999, when the G.R dated 8.3.1999 was issued for regularization of 3761 employees who were working for more than one year continuously on 1.4.1999 and subject to other

conditions. The Applicant in this Original Application has the following to state about the limitation:-

“5. Limitation: The Applicant further declares that the application is within the limitation prescribed in Sec. 21 of the Administrative Tribunals Act, 1985 in respect of challenge to the advertisement dated 20.7.2014 and the prayer of the regularization of his services is a continuous cause of action as the proposal of regularization of services of applicant is still pending with respondents and no decision is taken on the same after the discriminatory treatment meted out to the applicant at the time of issuance of order dated 29.6.1999 as per provisions of the G.R dated 8.3.1999.”

It is quite clear that the Applicant had tried to gloss over the issue of limitation. The cause of action arose in 1999, when G.R dated 8.3.1999 was issued. The Applicant claims to have filed a representation on 10.5.2000. The Applicant should have been forthcoming and in all fairness sought condonation of delay. Issuance of an advertisement does not furnish a fresh cause of action.

7. The Applicant had admitted in his Original Application that he continued in service due to interim relief granted to him by order dated 4.7.1995 by the



Labour Court, Kolhapur in ULP no. 140 of 1995. As such on the appointed day as per G.R dated 8.3.1999, he had completed one year of service on 1.4.1999, but only due to Court's order. It is significant to note that when his representation dated 10.5.2000 was not considered, he prayed for amendment of his ULP no. 140 of 1995 seeking regularization in service as per his own admission. This fact is mentioned in para 6.14 of the Original Application. The permission to amend the ULP was granted on 9.7.2010 and ULP was finally decided by Labour Court on 15.3.2012. The following issues were framed by the Labour Court, Kolhapur in ULP no. 140/1995, viz.

Sr No.	Issues	Findings
1.	Whether the complainant was in the employment of the Respondent as alleged?	Issue is redundant
2.	Whether the termination of services of the complainant is illegal, improper and void?	In the negative
3.	Whether the domestic enquiry held by the Respondent against the complainant is just, legal and proper?	Issue is redundant
4.	Whether the Respondent has engaged in unfair labour practice as alleged?	In the negative
5.	Whether the Complainant is entitled for the relief of reinstatement, continuity of service and back wages?	In the negative
6.	What order?	Complaint is dismissed.

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The Complainant (i.e. the present Applicant) was not held entitled for any relief. From this order, it is quite clear that the Applicant was held to be not entitled to continuation in service after the expiry of the period of appointment for 29 days, i.e. 13.4.1995. From this, it is clear that the Applicant continued in service as on 1.4.1999 only due to interim relief, and the Court has held that he was not entitled to that relief. It cannot be said that he fulfills the requirement of G.R dated 8.3.1999.

7. The Applicant has claimed in the O.A that his name (or the post he was occupying) was included in the list of incumbents whose services were to be regularized. The list of 29 persons from Higher Education Department or the list of 1378 posts or the list of 3761 employees have not been appended by the Applicant. The Applicant is claiming that his name was included in the list of 29 persons mentioned in the G.R dated 29.6.1999. The G.R is at page 44-46 of the Paper Book. The list of 29 persons is at pages 47-50. However, the list at pages 47-50 is not an authentic list, as it is not signed by any Government functionary. The claim of the Applicant in this regard is quite difficult to accept. In para 11 of the affidavit in reply dated 2.4.2016, filed by Respondents no 1 to 4, it is stated that:-



“11. With reference to Para no. 13, it is true to say that the services of the Applicant only because of protection granted by Ld. Member, Industrial Court, Kolhapur but it totally false to say that Applicant's post is included in the proposal for Regularization vide G.R dated 8.3.1999 as earlier paras no. 5 and 9 it is made crystal clear that the provisions G.R also not applicable for the Applicant's case.”

There is no evidence on record to show that the Applicant's post was included in the list of posts to be regularized in terms of G.R dated 8.3.1999.

8. The Applicant has relied on the following judgments of this Tribunal; viz:-

- (i) Judgment dated 12.4.2006 in a group of O.A no 327/2001 etc.

The services of the Applicants were ordered to be regularized from the date of initial appointments on the basis of Government decisions dated 24.11.1990 and 26.7.1990 by which services of similarly situated persons were regularized by Aurangabad and Nagpur bench of this Tribunal. These O.As were allowed on the lines of orders issued by Director of Higher Education dated 17.7.2000. If the Applicant is claiming that he is similarly situated person, he should have

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approached this Tribunal after the judgment was delivered on 12.4.2006 in those O.As. This judgment does not apply to all cases of regularization. It is based on Government decisions dated 24.11.1990 and 26.7.1990. Whether that have any application in the present case is not established by the Applicant. The Applicant is seeking relief under G.R dated 8.3.1999, which is not based on these decisions. This case is clearly not applicable.

- (ii) Judgment dated 15.4.2011 in O.A no 6/2011. This judgment is based on earlier judgment dated 12.4.2006 in O.A no 327/2001 etc. The Applicants in this Original Application were similarly situated persons like the Applicants in O.A no 327/2001 etc. The Applicant's case is quite different.
- (iii) Judgment dated 27.6.2013 in O.A no 930/2010. In this case, the Applicant continued in service by virtue of order of the Labour Court, Kolhapur. Here the similarities with the case of the Applicant end. The ULP of the Applicant in that case was not dismissed, but it was directed that he may continue in service till a person selected by Subordinate Selection Board was available. The Applicant continued in service till 8.7.2010, as no candidate was selected by the Board. In the meanwhile, G.R

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dated 3.12.2008 came to be issued and the Applicant was held to be covered by the G.R. In the present case, the Applicant failed to get any substantial relief from the Labour Court. He is held to be ineligible to get the benefit of G.R dated 8.3.1999. This case is clearly distinguishable.

- (iv) O.A no 416 of 2012 decided on 15.12.2014. The Applicant in this Original Application was held to be similarly situated as the Applicants in O.A no 327/2001 etc. and the same benefit was extended to him. The case is clearly distinguishable.

9. The Applicant, after his case was dismissed by the Labour Court, Kolhapur by order dated 15.3.2012, filed Revision Application before Industrial Court, Kolhapur which granted interim relief to him. The Applicant has continued to work as Laboratory Assistant by virtue of that order. The Applicant had no compunction in filing this Original Application, when his Revision Application seeking the same relief was pending before the Industrial Court. Only some times in May/June 2016, he withdrew Revision (ULP) no. 44/2012, from Industrial Court, Kolhapur. Such a conduct on part of the Applicant is highly reprehensible. In any case, as the issue regarding eligibility of the Applicant for continuance in service has been decided by the Labour Court, Kolhapur by order dated 15.3.2012 in

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the negative, this Tribunal will not be justified in sitting over judgment of that Court. On the basis of Labour Court order dated 15.3.2012, the Applicant is not entitled to get his services regularized in terms of G.R dated 8.3.1999. In fact, the Applicant is held not to be entitled to continue in service beyond 13.4.1995.

10. The prayer of the Applicant that his services may be regularized in terms of G.R dated 8.3.1999 cannot be accepted as he does not fulfil the conditions required for regularization in that G.R. There is no merit in this Original Application and it is dismissed with no order as to costs.

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**

**Date : 08.07.2016**

**Dictation taken by : A.K. Nair.**